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EXAMINER	
HUYNH, KHOA D	

ART UNIT	PAPER NUMBER
3751	

DATE MAILED: 12/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/913,339	DUEZ ET AL.	
	Examiner	Art Unit	
	Khoa D. Huynh	3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 September 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *19-39 and 41-48* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19-39 and 41-48* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *07 September 2004* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Drawings

The drawings, especially elected Figures 5a-5e, are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the support having at least one orifice as recited in claim 19 and the support is a backing as recited in claim 23, the backing is rigid and elastically deformable and the orifice is a slit as recited in claim 24, the backing is formed by a network of polyester threads resulting from an association of weft and warp threads as recited in claim 25, and the backing is of polyester reinforced with elastomer must be shown or the features canceled from the claims. No new matter should be entered.

The drawings, especially elected Figures 5a-5e, are objected to under 37 CFR 1.83(a) because they fail to show the backing is formed by a network of polyester threads resulting from an association of weft and warp threads as described in the specification, page 11, and the backing is of polyester reinforced with elastomer as briefly mentioned in the summary of invention, page 4 of the instant specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 20-22, 29-32 and 46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Each of the claims 20-22 recites the limitation "the length". There is insufficient antecedent basis for this limitation in the claims.

Regarding claim 29, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 30 depends on claim 29 and is likewise indefinite.

Claim 31 recites the limitation "the central surface" in line. There is insufficient antecedent basis for this limitation in the claim.

Claim 32 depends on claim 31 and is likewise indefinite.

Claim 46 recites the limitation "the central surface" in line. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 19-21, 23, 26, 27, 29, 31-35, 42, 46 and 47 are rejected under 35 U.S.C. 102(e) as being anticipated by Fischer (5816804).

Regarding claim 19, the Fischer discloses a device for applying a fluid. The device includes a body (at 12) having a reservoir (the interior portion of the barrel 12) for the fluid, an application head comprising bristles (at 50) fixed on a support (at 14) having an orifice (at 48). As schematically shown in Figure 4, the application head is being adapted to the body. The bristles have lengths of less than 20 mm (col. 6, lines 21-24) to enabling good application effect of the fluid. The device also includes means for conveying (at 22) the fluid from the reservoir to the application head.

Regarding claims 20 and 21, the length of the bristles is less than 15 mm and not more than 10 mm (col. 6, lines 21-24).

Regarding claim 23, the support is inherently a backing (element 14 formed a back which supports the bristles).

Regarding claim 26, the bristles are fixed to the backing by means of bonding (col. 6, lines 46-49).

Regarding claim 27, the backing is inherently of polyester (polyester is a polymers used in making plastic) since the Fischer reference also discloses that the backing (at 14) is a thermoforming plastic material (col. 6, lines 49-51).

Regarding claim 29, the bristles are of a mixed material from both natural and synthetic fibers (col. 6, lines 27-35).

Regarding claim 31 (as best understood), as schematically shown in Figure 2B, the support (at 14) is fixed to at least a portion of the central surface of a base (at 33) adaptable to the body (at 12) of the device. The base (at 33) has an orifice (at 46) allowing the product to pass from the reservoir through the orifice (at 46) of the base and through the orifice (at 48) of the support and then to the application head and the bristles.

Regarding claim 32, as schematically shown in Figure 2B, the outside edge of the base (at 33) is rounded.

Regarding claims 33-35, the bristles have a diameter between approximately 15 μm and approximately 60 μm, approximately 20 μm and

approximately 40 μm, approximately 35 μm and approximately 40 μm (col. 6, lines 24-27).

Regarding claim 42, as schematically shown in Figure 4, the body is integrated with reservoir.

Regarding claim 46 (as best understood), as schematically shown in Figure 2B, the bristles (at 50) is fixed to at least a portion of the central surface of a base (at 33) adaptable to the body (at 12) of the device. The base (at 33) has an orifice (at 46) allowing the product to pass from the reservoir through the orifice (at 46) of the base and through the orifice (at 48) of the support and then to the application head and the bristles.

Regarding claim 47, the support is inherently a backing (element 14 formed a back which supports the bristles).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 22, 28, 30, 36-38 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer (5816804).

Regarding claim 22, even though the Fischer reference does not specifically disclose that the bristles having lengths not less than 5 mm as claimed, it, however, would have been obvious to one of ordinary skill in the art at

the time the invention was made to having modified the Fischer bristles by employing the length of the bristles not less than 5 mm. Such modification would be considered a mere choice of a preferred length of the bristles on the basis of its suitability for the intended use especially since the Fischer reference also discloses that the lengths of the bristles could be longer or short depending on the application (col. 6, lines 10-25).

Regarding claim 28 (as presently understood), even though the Fischer reference does not specifically disclose that the backing is of polyester reinforced with elastomer as claimed, it, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to having modified the Fischer reference by employing the backing of polyester reinforced with elastomer. Such modification would be considered a mere choice of a preferred material of the support on the basis of its suitability for the intended use especially since the Fischer reference also discloses that the support or backing could be made from a plastic material (col. 6, lines 46-56).

Regarding claim 30, even though the Fischer reference does not specifically disclose that the bristles are of mohair as claimed, it, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to having modified the Fischer reference by employing the bristles made of mohair. Such modification would be considered a mere choice of a preferred material for the bristles on the basis of its suitability for the intended use (see

cited US 5829087 or GB 1418889 as evidence for the use of bristles made of mohair).

Regarding claims 36-38, even though the Fischer reference does not specifically disclose the density of the bristles as claimed, however, to select a density with the claimed range would be considered mere routine experimentation to the artisan skilled in the brush applicator art determined solely by the particular material from which the bristles are made, the particular product being dispensed as well as by the particular type of coverage to be made to the applied surface and would simply be the result of optimization of the prior art teaching through routine experimentation, which is not a matter of invention, absent a showing to the contrary. *In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955) and MPEP 2144.05.*

Regarding claim 48, the Fischer discloses a device for applying a fluid. The device includes a body (at 12) having a reservoir (the interior portion of the barrel 12) for the fluid and an orifice (about 15) in flow communication with the reservoir, an application head comprising bristles (at 50) fixed on a support (at 14). The application head is in flow communication with the orifice of the body and the support arranged to permit the fluid to pass from the reservoir to the bristles. The application head is adaptable to the body (Fig. 5).

Even though the Fischer reference does not specifically disclose that the bristles having lengths of between 5 mm and 20 mm as claimed, it, however, would have been obvious to one of ordinary skill in the art at the time the

invention was made to having modified the Fischer bristles by employing the length of the bristles ranging from 5 mm to 20 mm. Such modification would be considered a mere choice of a preferred length of the bristles on the basis of its suitability for the intended use especially since the Fischer reference also discloses that the lengths of the bristles could be longer or short depending on the application (col. 6, lines 10-25).

7. Claims 19-23, 29, 33-39, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baumann et al. (3616970) in view of Gueret (6033143).

The Baumann et al. reference discloses a device for applying a product such as cosmetics or shaving cream (lines 62-66 in col. 2) having the claimed features including a body (constituted by the container structure of sleeve member 1) including a reservoir (constituted by inner compartment 6, also lines 58-63 in col. 2) for the product, an application head (constituted by applicator element 8 and cover member 7) having the bristles of a brush (lines 70-74 in col. 2) fixed on the support formed by cover member 7 having an orifice or material discharge opening (15), the application head being adaptable to the body (1) (also Fig. 1 and lines 35-38 in col. 4), and means for conveying the product from the reservoir (6) to the application head (constituted by the piston member 2 and the threaded spindle 3).

Although the Baumann et al. reference discloses that a small brush or a brush could be used as the applicator element 8 (lines 71-74 in col. 2) but fails to describe the length of the bristles forming such brushes, attention, however, is

directed to the Gueret reference who discloses another device for applying a product wherein the device uses an application head formed by brush bristles having a length ranging from 8 to 40 mm and preferably from 11 to 20 mm (lines 5-10 in col. 3) in order to provide an applicator which allows the product to be applied rapidly while at the same time conveying much more product than a conventional brush such that it is possible to deposit a layer thickness greater than with a conventional brush (lines 43-49 in col. 1). Therefore, it would have been obvious to one of ordinary skill in the brush applicator art, at the time the invention was made, to form the bristles of Baumann et al. having a length ranging from 8 to 20 mm, in view of the teachings of Gueret, in order to provide an applicator which allows the product to be applied rapidly while at the same time conveying much more product than a conventional brush such that it is possible to deposit a layer thickness greater than with a conventional brush. In addition, such lengths of the bristles would inherently enable good foaming effect since the modified Baumann et al. brush would allow the product, i.e. shaving cream to be applied rapidly with a thicker layer than a conventional brush.

Regarding claim 20, the Gueret reference further teaches the obviousness of using a bristle length less than 15 mm (lines 5-10 in col. 3).

Regarding claim 21, the Gueret reference also teaches the obviousness of using a bristle length of not more than 10 mm (lines 5-10 in col. 3).

Regarding claim 22, the Gueret reference additionally teaches the obviousness of using a bristle length that is not less than 5 mm (lines 5-10 in col. 3).

Regarding claim 23, the support formed by cover member (7) in Baumann et al. inherently forms a backing.

Regarding claim 29, the Gueret reference further teaches the obviousness of forming the brush bristles of synthetic materials or natural materials (lines 11-20 in col. 3).

Regarding claim 33, the Gueret reference also teaches the obviousness of using a bristle diameter between approximately 15 μm and 60 μm, i.e., approximately 15/100th of a mm and approximately 60/100th of a mm (lines 13-15 in col. 3).

Regarding claim 34, the Gueret reference additionally teaches the obviousness of using a bristle diameter between approximately 20 μm and 40 μm, i.e., approximately 20/100th of a mm and approximately 40/100th of a mm (lines 39-41 in col. 3).

Regarding claim 35, the Gueret reference further teaches using a bristle diameter between approximately 35 μm and 40 μm, i.e., approximately 35/100th of a mm and approximately 40/100th of a mm (lines 39-41 in col. 3).

Regarding claims 36-38, although the Baumann et al. reference fails to describe the specific density of bristles used in forming the brush applicator, nonetheless, to select a density within the claimed range would be considered

mere routine experimentation to the artisan skilled in the brush applicator art determined solely by the particular material from which the bristles are made, the particular product being dispensed as well as by the particular type of coverage to be made to the applied surface and would simply be the result of optimization of the prior art teachings through routine experimentation, which is not a matter of invention, absent a showing to the contrary (see *In re Aller, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955), In re Hoeschele, 406 F.2d 1403, 160 USPQ 809 (CCPA 1969), and MPEP 2144.05*).

Regarding claim 39, the Baumann et al. reference further discloses a cream product, such as shoe cream, and especially, a shaving cream (lines 58-67 in col. 2), which is capable of forming foam during its application to the surface to which it is applied.

Regarding claim 41, the Baumann et al. reference also discloses that the application head is fixed to the body (1) and the body is a non-aerosol container structure or can.

Regarding claim 42, the Baumann et al. reference additionally discloses that the body (1) is integrated with the reservoir 6 (lines 62-63 in col. 2).

8. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Baumann et al. (as discussed supra) in view of Goncalves (4848946).

It is considered that the orifice (15) in Baumann et al. constitutes a slit type of opening. Although the Baumann et al. reference fails to disclose the materials forming the applicator head, attention is directed to Goncalves who discloses

another brush type applicator in which the applicator is made of flexible plastic material which is rigid and elastically deformable (lines 8-10 in col. 2) so that it is of simple construction and adaptable for all kinds of containers (lines 47-49 in col. 1). Therefore, it would have been obvious to one of ordinary skill in the brush applicator art, at the time the invention was made, to form the brush applicator head of Baumann et al. of flexible plastic material which is rigid and elastically deformable, in view of the teachings of Goncalves, in order to form an applicator head that is of simple construction and adaptable for all kinds of containers.

9. Claims 25-28, 31, 32, 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Baumann et al. (as discussed supra) in view of Barber, Jr. (6179887).

Regarding claims 25 and 27, although the Baumann et al. reference fails to disclose the specific material forming the backing support of the brush applicator, attention, however, is directed to Barber, Jr. who discloses another brush applicator having a backing (line 65 in col. 16 to line 33 in col. 17) formed by a network, i.e., a woven fabric, of polyester threads resulting from an association of weft and warp threads (lines 13-19 and 29-30 in col. 17) in order to form a backing which is flexible and exhibits substantial conformability to whatever surface it is being applied to (lines 13-16 in col. 17). Therefore, it would have been obvious to one of ordinary skill in the brush applicator art, at the time the invention was made, to form the backing support of Baumann et al. by a

network, i.e., a woven fabric, of polyester threads having a weft and warp, in view of the teachings of Barber, Jr., in order to form a backing which is flexible and exhibits substantial conformability, when in use, to whatever surface it is being applied to.

Regarding claim 26, although the Baumann et al. reference fails to disclose how the brush bristles are attached to the support backing, attention, however, is also directed to Barber, Jr. who discloses another brush applicator having the bristles attached or fixed to a backing by weaving or bonding (lines 29-32 in col. 17). Therefore, it would have been obvious to one of ordinary skill in the brush applicator art, at the time the invention was made, to form the brush of Baumann et al. by weaving or bonding, in view of the teachings of Barber, Jr., in order to form a flexible, supple brush that is easily conformable, when in use, to whatever surface it is being applied to.

Regarding claim 28, although the Baumann et al. reference fails to disclose the specific material forming the backing support of the brush applicator, attention, however, is also directed to Barber, Jr. who discloses another brush applicator having a backing (line 65 in col. 16 to line 33 in col. 17) formed by polyester reinforced with elastomer (lines 13-23 in col. 17) in order to form a backing which is flexible and exhibits substantial conformability, when in use, to whatever surface it is being applied to.

Regarding claims 31 and 46, although the Baumann et al. reference fails to disclose the structure constituting the brush, attention, however, is also

directed to Barber, Jr. who discloses another brush applicator wherein the brush is manufactured or formed so as to have bristles extending from a backing or base (lines 20-24 in col. 1) in order to form the brush. Therefore, it would have been obvious to one of ordinary skill in the brush applicator art, at the time the invention was made, to form the brush of Baumann et al. so that its bristles extend from a backing, in view of the teaching of Barber, Jr., in order to manufacture a conventional type of brush.

Regarding claims 31 and 46, the Baumann et al. reference further discloses fixing the brush to at least a portion of the central surface of a base (constituted by cover member 7) adaptable to the body of the device with the base having at least one orifice (15) which allows the product to pass from the reservoir through the at least one orifice (15) and through at least one orifice (14) of the support or backing of the brush (Fig. 1).

Regarding claim 32, the Baumann et al. reference further discloses that the outside edge of the base (4) is rounded (lines 20-22 in col. 2).

With respect to claim 47, the Barber, Jr. reference further teaches the obviousness of forming the brush with a support constituting the backing or base.

10. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Baumann et al. (as discussed supra) in view of Donsky (6120202).

Although the Baumann et al. reference fails to disclose from what specific material the bristles of the brush applicator are formed, attention, however, is directed to Donsky who discloses another brush applicator in which the bristles

are formed of mohair. Therefore, it would have been obvious to one of ordinary skill in the brush applicator art, at the time the invention was made, to form the bristles of Baumann et al. from mohair, in view of the teachings of Donsky, in order to provide a brush made of natural origin to comply with ecological conservation concerns.

11. Claims 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Baumann et al. (as discussed supra) in view of Webster (3791098).

The Baumann et al. reference further discloses that the shaving cream product container structure (1) is a piston operated reservoir device. Although the Baumann et al. reference fails to disclose that the shaving cream product container structure (1) could be formed with a flexible and deformable bag reservoir which is surrounded by propellant gas, attention, however, is directed to Webster who discloses another shaving product container structure (lines 28-30 in col. 7) in which the container structure is a pressurized container or can having a flexible and deformable bag (lines 35-38 in col. 1 and 34-36 in col. 2) which is surrounded by propellant gas (lines 44-51 in col. 6) and that uses a valve in order to dispense the product in controlled amounts (lines 5-1 1 in col. 1) when a non-foamy gel shaving product is to be dispensed (lines 32-37 in col. 1). Therefore, it would have been obvious to one of ordinary skill in the applicator art, at the time the invention was made, to form the shaving product container structure of Baumann et al. as a can or container formed with a reservoir defined by a flexible and deformable bag surrounded by propellant gas, in view of the teachings of

Webster, in order to dispense a non-foamy gel shaving product in controlled amounts.

Regarding claim 44, although the Webster reference fails to describe the specific gas used for the propellant gas, to use compressed air as the propellant gas is considered to be obvious to one of ordinary skill in the applicator art especially when complying with or taking into account the environmental and ecological concerns regarding the ozone layer and atmospheric conditions.

Regarding claim 45, the Baumann et al. reference further discloses that the application head is fixed to the container. The Webster reference further teaches the obviousness of using a valve 16 of ring or annular shape (Fig. 1 and lines 6-9 in col. 4).

Response to Amendment

12. Applicant's amendment, filed on 09/26/2005, to the pending claims is insufficient to distinguish the claimed invention from the cited prior art or overcome the rejections as discussed above.

Response to Arguments

13. Applicant's arguments filed on 09/26/2005 with respect to the pending claims have been fully considered. However, such arguments are deemed not persuasive.

In response to applicant's arguments against the references, especially the Gueret reference, individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument that Gueret is a non-analogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the Gueret reference is (a) in the field of applicant's endeavor which is a device for applying a fluid product and (b) reasonably pertinent to the particular problem of enabling good foaming effect (see above stated rejection).

Applicant also asserts that there is no suggestion or teaching to combine the references, i.e. Baumann et al. and Gueret to arrive at applicant's invention as claimed. See the Remarks section.

The examiner recognizes that references cannot be arbitrarily combined and that there must be some reasons why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya, 184 USPQ 607 (CCPA 1975).* However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin, 170 USPQ 209 (CCPA 1971).* References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek, 163 USPQ 545 (CCPA 1969).*

In this case, for instance, Baumann et al. does teach a device for applying a product such as cosmetics or shaving cream having substantially all claimed features except for the length of the bristles. Gueret is applied herein for the teaching of using bristles having a length ranging from 8 to 40 mm and preferably from 11 to 20 mm in order to provide an applicator which allows the product to be applied rapidly while at the same time conveying much more product than a conventional brush such that it is possible to deposit a layer thickness greater than with a conventional brush. In addition, such lengths of the bristles would inherently enable good foaming effect since the modified Baumann et al. brush would allow the product, i.e. shaving cream to be applied rapidly with a thicker layer than a conventional brush. The examiner maintains that such modification, i.e. using bristles having a length ranging from 8 to 40 mm and preferably from 11 to 20 mm is well within one of ordinary skill art and is not convinced that the use of such lengths for the bristles rises to the level of patentability.

Furthermore, applicant's arguments with respect to claim 19 and new claim 48 have been considered but are moot in view of the new grounds of rejection as discussed supra.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Khoa D. Huynh
Primary Examiner
Art Unit 3751

HK
12/19/2005